



United States Department of the Interior
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
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WEST VALLEY CITY, UTAH 84119

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January 11, 2006

DIV. OF OIL, GAS & MINING

Receiving
C/007/0013

Memorandum

To: Reclamation and Enforcement, Regional Director, (Attention: Carl R. Johnston),
Office of Surface Mining, P.O. box 46667, Denver, Colorado 80201

From: Utah Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Salt
Lake City, Utah

Subject: Formal Section 7 consultation, UtahAmerican Energy Company, "Lila Canyon"
Mine, Utah State Permit C/007/0013

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of December 13, 2005 regarding the proposed Lila Canyon Mine in Carbon and Emery Counties. Potential impacts to proposed or listed species from mining activities have been previously addressed in the Service's September 24, 1996 Biological Opinion and Conference Report on Surface Coal Mining and Reclamation Operations under the Surface Coal Mining and Reclamation Act of 1977. As part of the terms and conditions of this BO, the regulatory authority must implement and require compliance with any species-specific protective measures developed by the Service field office and the regulatory authority.

Depletion to the Upper Colorado River System: Colorado River Endangered Fish Species; Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub:

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and the Interagency Cooperation Regulations (50 CFR 402), the Fish and Wildlife Service (Service) reviewed your correspondence regarding the impacts of the project on endangered Colorado River fishes. The proposed action will cause an average annual depletion of 80.81 acre-feet to the River in the Upper Colorado River Basin.

A Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program) was initiated on January 22, 1988. The Recovery Program is considered the reasonable and prudent alternative to avoid jeopardy to the endangered fishes by depletions from the Upper Colorado River Basin.

In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. Incorporated into this agreement is a Recovery Implementation Program Recovery Action Plan (Plan) which identifies actions required to recover the endangered fishes in the most expeditious manner.

Included in the Recovery Program is the requirement that water depletion fees would be paid to help support the Recovery Program. On March 9, 1995, the Service issued an intra-Service biological opinion determining that the depletion fee for depletions of 100 acre-feet or less are no longer required because the Recovery Program has made sufficient progress to be the reasonable and prudent alternative to avoid the likelihood of jeopardy to the endangered fishes and to avoid destruction of adverse modification of their critical habitat by depletions of 100 acre-feet or less. Water depletion associated with this project is authorized under the March 1995 biological opinion. Therefore, the depletion fee for this project is waived.

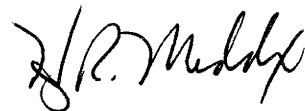
The Office of Surface Mining should condition their permit to retain jurisdiction in the event that the Recovery Program is unable to implement the Plan in a timely manner. In that case, as long as the lead Federal Agency has discretionary authority over the project, reinitiation of section 7 consultation may be required so that a new reasonable and prudent alternative can be developed by the Service.

The Office of Surface Mining must also report actual annual water depletion from this project to this office at the end of each fiscal year. The Recovery Program maintains water depletion records to ensure that recovery goals are not hindered by excessive depletions.

Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

Only a Federal agency can enter into formal Endangered Species Act section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

We appreciate your interest in conserving endangered species. If further assistance is needed or you have any questions, please contact Diana Whittington, at (801) 975-3330 extension 128.



cc: UDOGM – Coal Regulatory Program, (Attention: Pamela Grubaugh-Littig and Jerriann Ernsten), 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801
USFWS - Upper Colorado River Recovery Program (Attn: Angela Kantola), 44 Union Boulevard, Suite 120, Lakewood, Colorado 80228